Ketua Pengarah Jabatan Hasil Dalam Negeri, Malaysia & Anor v Aria Kumar & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-01-5-94
GOPAL SRI RAM, SITI NORMA YAAKOB AND MAHADEV SHANKAR JJCA
17 JANUARY 1995

Public Servants *— Dismissal — Procedure — Tax officer absent from work pending appeal against transfer — Tax department sent warning by AR registered letter — Letter not sent to correspondence address and returned undelivered — Whether could send letter without attempting to trace officer — Whether sending of letter an attempt to trace officer — Whether dismissal void — Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980 orders 21(4), (5) & (6)*

The respondents, who were officers of the Department of Inland Revenue ('the department'), were transferred from the Kuala Lumpur office to the Kuala Terengganu office but appealed against their transfers. While the respondents were waiting for the result of their appeals, the department sent AR registered letters to the respondents to an address different from that stated in the respondents' correspondence with the department, stating that the respondents would be dismissed in accordance with Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980 ('the General Orders'), if they failed to report for work immediately. The letters were returned undelivered, and the department later published a notification to the same effect in the *Gazette*. The respondents were then dismissed as they did not report for duty. However, they successfully obtained a declaration from the High Court that their dismissals were void, on the ground that the department had failed to comply with order 21(5) of the General Orders which states that an AR registered letter could only be sent if an officer is absent and cannot be traced. In this case, the AR registered letters were returned undelivered and were not addressed to the respondents' correspondence address. The department has appealed, arguing that order 21(5) had been satisfied, as the act of sending the AR registered letters amounted to an attempt to trace the respondents.

Held, dismissing the appeal:

(1) Order 21(5) of the General Orders which provides that the AR registered letter preparatory to the *Gazette* notification can only be sent where an officer is absent and cannot be traced, is a mandatory provision.

(2) The word 'trace' in order 21(5) means to discover, find by investigation, ascertain, or search out. The tracing of an officer is a precondition to the sending of the AR registered letter. Therefore, the department had to be satisfied that the respondents

could not be traced before resort could be had to the sending of the AR registered letter. A

[Bahasa Malaysia summary

Responden-responden, yang merupakan pegawai di Jabatan Hasil Dalam Negeri ('jabatan itu'), telah ditukar dari pejabat di Kuala Lumpur ke pejabat di Kuala Terengganu tetapi telah membuat rayuan terhadap penukaran mereka. Sementara responden menanti keputusan rayuan mereka, jabatan itu telah menghantar surat berdafter AR kepada responden yang dialamatkan kepada alamat yang berbeza daripada apa yang dinyatakan di dalam persuratan responden dengan jabatan itu yang menyatakan bahawa responden akan dipecat mengikut Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 ('Perintah Am tersebut'), jika mereka gagal melaporkan diri untuk bertugas dengan segera. Surat tersebut telah dikembalikan tanpa dapat dihantar serah, dan jabatan itu kemudiannya menerbitkan suatu pemberitahuan yang mempunyai kesan yang serupa di dalam *Warta*. Responden kemudiannya telah dipecat kerana gagal melaporkan diri untuk bertugas. Walau bagaimanapun, mereka berjaya mendapatkan suatu deklarasi dari Mahkamah Tinggi bahawa pemecatan mereka itu adalah tidak sah, atas alasan bahawa jabatan itu telah gagal mematuhi perintah 21(5) Perintah Am tersebut yang menyatakan bahawa surat berdaftar AR hanya boleh dihantar jika seseorang pegawai tidak hadir dan tidak boleh dikesan. Di dalam kes ini, surat berdaftar AR tersebut telah dikembalikan kerana tidak dapat dihantar serah dan tidak dialamatkan ke alamat surat-menyurat responden. Jabatan itu telah membuat rayuan dengan berhujah bahawa perintah 21(5) telah dipatuhi, kerana tindakan menghantar surat berdaftar AR tersebut merupakan suatu percubaan untuk mengesan responden. B C D E F

Diputuskan, menolak rayuan itu:

(1) Perintah 21(5) Perintah Am tersebut yang menyatakan bahawa surat berdaftar AR yang merupakan persediaan kepada pemberitahuan di dalam *Warta* hanya boleh dihantar apabila seseorang pegawai itu tidak hadir atau tidak boleh dikesan, merupakan suatu peruntukan mandatori. G

(2) Perkataan 'dikesan' di dalam perintah 21(5) bermakna dijumpai, dicari secara penyiasatan, dipastikan, atau dicari. Pengesanan seseorang pegawai adalah suatu prasyarat kepada penghantaran surat berdaftar AR itu. Oleh yang demikian, jabatan itu mesti berpuas hati bahawa responden tidak dapat dikesan sebelum ia boleh menghantar surat berdaftar AR tersebut.] H

Notes I

For cases on the dismissa of public servants, see 10 *Mallal's Digest* (4th Ed) paras 1324–1359; [1993] Mallal's Digest 1133.

Legislation referred to

Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980 orders 21 (4), (5), (6)

Abdul Karim bin Abdul Jalil (Senior Federal Counsel) for the appellants.
V Kanagalingam (*VK Lingam & Co*) for the respondents.

Cur Adv Vult

Mahadev Shankar JCA (delivering the judgment of the court): The appellants have come before us for an order to set aside a declaration made in the High Court that the purported dismissal of the respondents was void.

The facts are fully set out in the judgment of Wan Adnan J, dated 14 September 1994.

Suffice to say that the respondents (who were husband and wife) were 'pembantu-pembantu cukai' stationed in Kuala Lumpur. On 9 July 1988, both were transferred to Kuala Terengganu. They appealed. They gave their address in their appeal letter as Jabatan Hasil Dalam Negeri, Kuala Lumpur. On 1 August 1988, the timbalan ketua pengarah rejected their appeal. On 2 August 1988, they saw the Ketua Pengarah himself and handed him another appeal letter giving the same address. He advised them to appeal to the Secretary-General of the Ministry of Finance. They did so by letter dated 22 August 1988. As no reply was received, they sent reminders on 10 October 1988 and again on 31 January 1989, giving the same address.

Whilst waiting for a response to their appeal, the Kuala Terengganu office sent each respondent an AR registered letter on 26 August 1988. These letters stated that the respondents had been absent from duty without just cause from 4 August 1988, and that if they did not report for duty immediately, disciplinary action would be taken to dismiss them in accordance with Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980 reg 21(4) and (6).

These AR registered letters were addressed *not* to the address given by the respondents in their correspondence with the department, but to K38 Jalan Merbau, Taman Setapak, 53000 Kuala Lumpur. Both letters were returned undelivered.

These AR cards should have alerted the Kuala Terengganu office that neither respondent was at the Setapak address to receive the letters. Indeed, the AR cards did not state any reason why the letters were not received at the said address.

On 2 March 1989, the department published a *Gazette* notification to the effect that the respondents had been absent from their positions without just cause, and if they failed to report for duty within seven days from the date of the *Gazette*, they would be deemed to have been dismissed.

Since they did not comply with the *Gazette* notification, they were deemed dismissed on 10 March 1989, such dismissal to take retrospective effect from the first day they should have reported for work at Kuala Terengganu.

The reply from the Secretary-General only came by letter dated 12 April 1989. It was not favourable.

Before us the appeal turned on only one point. Regulation 21(5) is mandatory, and it provides that the AR registered letter preparatory to the *Gazette* notification can only be sent, 'Where an officer is absent and *cannot be traced* ...'. (Emphasis added.)

The learned federal counsel submitted that the act of sending the AR registered letters to the Setapak address amounted to an attempt to trace the respondents and, therefore the requirements of reg 21(5) had been fulfilled.

With respect to federal counsel, we could not agree with this submission.

The word 'trace' here simply means 'to discover, find by investigation, ascertain, or search out' (see the *Shorter Oxford English Dictionary*). As the trial judge correctly pointed out, this was a precondition. In other words, it had to be satisfied *before* resort could be had to the sending of the AR registered letter.

Since this had not been done, we were obliged to dismiss this appeal without calling upon the respondents. The order to the High Court will stand and the appellants must pay the taxed costs of this appeal.

Appeal dismissed.

Reported by Isabel Liong